

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN JERRY O'NEIL**, on March 31, 2003 at  
3:23 P.M., in Room 350 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Duane Grimes, Vice Chairman (R)  
Sen. John C. Bohlinger (R)  
Sen. Brent R. Cromley (D)  
Sen. Bob DePratu (R)  
Sen. John Esp (R)  
Sen. Dan Harrington (D)  
Sen. Trudi Schmidt (D)  
Sen. Emily Stonington (D)

**Members Excused:** Sen. Jerry O'Neil, Chairman (R)

**Members Absent:** None.

**Staff Present:** Dave Bohyer, Legislative Branch  
Andrea Gustafson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted:

Executive Action: HJ 29; HJ 31; HB 734; HB 569

**EXECUTIVE ACTION ON HJ 29**

**Motion:** SEN. HARRINGTON moved that HJ 29 BE CONCURRED IN.

**Discussion:**

SEN. JOHN ESP, SD 13, Big Timber, said he had an amendment, number HJ02901.adb. **EXHIBIT (phs68a01)** The first change was on Page 2, Line 27 and the line would read that the Fifty-eighth Legislature encouraged all branches of State Government through the Department of Public Health and so on until Line 28, following services it would say "and when practical appropriate and safe work toward the development and maintenance of consistent and complete," etc. On Page 3, Line 2, a copy would be provided to the Governor, the Chief Justice of the Supreme Court, and the Department of Public Health and Human Services because it said to require all branches to do so.

SEN. BRENT CROMLEY, SD 9, Billings, asked SEN. ESP if the second one was the right placement because they were talking about how the department *shall* work. Right now it sounded like they were saying the department *shall* work when it was practical.

SEN. ESP said "shall" was gone when practical, appropriate, and safe work toward the development and maintenance was consistent.

SEN. CROMLEY asked if the department had to look for a time when working toward the development was safe.

SEN. ESP said it should read "to work," so it would say all branches of state government, when practical, appropriate, and safe to work toward the development and maintenance.

SEN. ESP requested to move the bill as amended.

**Motion/Vote:** SEN. BOHLINGER moved that HJ 29 BE CONCURRED IN AS AMENDED. Motion carried 7-0.

**EXECUTIVE ACTION ON HJ 31**

SEN. EMILY STONINGTON, SD 15, Bozeman, moved HJ 31.

**DISCUSSION:**

SEN. ESP had an amendment and he moved the amendment. It was amendment HJ03101.adb. **EXHIBIT (phs68a02)** The amendment did three things. The first change was on Line 28 inserting after "families," near the end of the line, it would read "within the

temporary assistance for needy families program that diverts families *including Native American Families* from the Assistance Program." In doing that, Lines 7 and 8 would be deleted on Page 2 that dealt with Native American Families. The second issue the committee talked about was on Line 6, counting against limits for assistance and trying to put some side boards on. Line 6 would read "*for a good cause, allow for the reasonable extension of the time limits for assistance.*"

**SEN. TRUDI SCHMIDT, SD 21, Great Falls,** asked for more background information regarding the second amendment and was it related to some discussion.

**SEN. ESP** said when the bill was heard, one of the questions the committee had was about allowing a blanket extension of the time limits without any qualifications. He said his amendment was to attempt to allow the department some flexibility but limited.

**SEN. CROMLEY** said it was a good amendment. He said the way it was worded before was not grammatically correct.

**Motion/Vote:** **SEN. BOHLINGER** moved that **AMENDMENT HJ03101.ADB BE ADOPTED.** Motion carried 9-0.

**Motion/Vote:** **SEN. STONINGTON** moved that **HJ 31 BE CONCURRED IN AS AMENDED.** Motion carried 9-0.

**SEN. STONINGTON** said she would carry HJ 31 on the Senate floor.

#### **EXECUTIVE ACTION ON HB 734**

**Motion:** **SEN. SCHMIDT** moved **HB 734 .**

#### **Discussion:**

**SEN. ESP** moved amendment HB073422.adb. **EXHIBIT(phs68a03)** He said the effect of the amendment was that the Governor would appoint people as of the public law codified in the United States codes and that was the 18 people that were codified under federal law and then in addition to that, the council must include one member of the Senate, one member of the House, and then all would serve a one year term except members that represented the developmentally disabled. They would serve terms as outlined in the Federal code. Most of them would be appointed by the Governor and serve during the Governor's term and then their term would be up for the next Governor to appoint.

**SEN. JOHN BOHLINGER, SD 7, Billings,** asked **Mr. Dave Bohyer, Legislative Services Division,** if he had any comment to make with respect to the amendment.

**Mr. Bohyer** said on the backside of that was the language out of 42-15-025, Subsection B, Part 3. He said reading through Subsection A, Parts 1-3, the same groups of individuals who were initially referenced in the bill before the materials were stricken, were there and that when Congress came back and amended them, if they did, Montana's law would continue to support it as federal law.

**SEN. CROMLEY** thought that addressed his concern. He said he wanted to be clear and that in terms it was not less than 50% instead of half, as before which would have been an odd number of people. The way he understood it there was no minimum size of the council other than a minimum size would be two because there had to be one, but there was no minimum or maximum beyond that.

**Mr. Bohyer** said the federal law did require the employment of certain members who were disabled or family members.

**Motion/Vote:** **SEN. BOHLINGER** moved that **AMENDMENT HB073422.ADB** BE **ADOPTED.** Motion carried 9-0.

**Motion/Vote:** **SEN. ESP** moved that **HB 734** BE **CONCURRED IN AS AMENDED.** Motion carried 9-0.

**SEN. BEA MCCARTHY, SD 29, Anaconda,** would carry the bill.

#### **EXECUTIVE ACTION ON HB 569**

**Motion:** **SEN. STONINGTON** moved that **HB 569** BE **CONCURRED IN.**

#### **Discussion:**

**SEN. ESP** said **SEN. JERRY O'NEIL, SD 42, Columbia Falls,** had to be gone and asked for his thoughts to be shared regarding HB 569.

**EXHIBIT(phs68a04)** **SEN. O'NEIL** urged for a Do Not Concur on the bill because it set up in code a program the state could not afford to fund.

**SEN. SCHMIDT** said she was not there for the hearing and asked who the proponents were and how the hearing went.

**SEN. STONINGTON** said the proponents were a lot of low income women who had infants who really needed help they hoped the program could be funded and felt that by putting it in statute, it set a priority that this was something for which was being aimed.

**SEN. BOHLINGER** said he had notes that 11 people spoke in support, there were no opponents, and among those who were proponents were **Hank Hudson, Rev. Bob Holmes, Amber Burns, Greg Daly, Mary Caffero, Marie Ramirez, Linda Greyson, Jody Melzer, Lanny Candelaria.**

**SEN. SCHMIDT** asked what the bill said and asked if instead of funding child care, the goal was to fund or allow for the mother to stay home and provide financial assistance for at home care.

**SEN. BOHLINGER** said his understanding of the bill was that it would allow a parent to stay home with a child until the child was two years old. He said considerable studies were showing the first two years of a child's life were the most important, most formative, and that the love and the attention a parent could provide had greater value than the money the parent would earn on minimum wage jobs.

**SEN. DAN HARRINGTON, SD 19, Butte,** said there was a second fiscal note and it basically said there was no fiscal impact and assumed that no funding was available for the existing appropriation to conduct this program unless a specific general fund was appropriated in HB 2. When federal private funds became available to support the program, the department would submit an amendment to the request of the spending authority. There was not a current fiscal impact to the bill.

**SEN. CROMLEY** said that was because of the amendment put on in the House and it was in a sense a hollow bill but when he was campaigning, the issue came up a lot in terms of programs like that and he supported the bill.

**SEN. DUANE GRIMES, SD 20, Clancy,** asked **Mr. Bohyer** whether it was coordination language or was it different from coordination and instruction on the end of the bill that would create problems with the codification. **Mr. Bohyer** said it was a codification that told the commissioner where the particular section needed to be.

**SEN. GRIMES** said it was coordination instructions for a delayed effective date. Sunset delayed effective dates were causing some difficulty getting the code published and asked if it would create problems. **Mr. Bohyer** said coordination instructions were somewhat problematic. It was delayed effective dates and termination dates that added extra sections to the code.

**SEN. ESP** moved a conceptual amendment adding a new section that would give a sunset date of July 1, 2005.

**SEN. HARRINGTON** asked **SEN. ESP** if that was done because he did not think it would be funded.

**SEN. ESP** said if it was not going to be funded he did not want it to show up in the base in present law in the next biennium and he was not sure it would not.

**SEN. STONINGTON** said a program that was unfunded in HB 2 now would not show up in base since it did not have any money attached to it. She asked **SEN. ESP** that if he did not like the bill, would it be better just to vote against the bill rather put on a sunset.

**SEN. ESP** said it was because he had the impression most would vote in favor of it so if it were to happen, he may as well put an amendment on it.

**{Tape: 1; Side: A}**

**SEN. HARRINGTON** said he would support the bill knowing there was no funding, but somewhere down the line it could be funded later possibly.

**SEN. CROMLEY** did not disagree with the amendment. He thought the chances of funding were not good seemed accurate; but, he thought it was the impression for some to keep at it and if there was a possibility of federal funding or private funding, those people would be coming back again. He said he would vote for the amendment.

**SEN. GRIMES** said he would have to oppose any sub set of amendments or contingency clauses on a bill.

**Motion/Vote:** **SEN. BOHLINGER** moved that **SEN. ESP'S AMENDMENT BE ADOPTED. Motion failed 3-6 with SEN. DEPRATU, SEN. ESP voting aye and SEN. O'NEIL voting aye by Proxy.**

**SEN. ESP** if it were done at the level they were suggesting, it would cost about 7 million dollars a year and not from a general fund but from somewhere and that it was a policy decision. He asked whether it was a priority or was day care. He said what needed to be considered was what the priority was and that someone had to have pay for it. If private funds were to be leveraged into a program, he would leverage them into the day care program rather than for the mothers to stay at home. He thought it should be left out of code and to look at trying to do federal waivers with private funds in day care was more appropriate and that could be done in a committee bill and financed.

**SEN. STONINGTON** maintained that the first two years of a child's life were the most important years for a mom to stay home with a child and that if we could get a program like that funded for women and families that were below 150% of the poverty level and allow the mom who wanted to stay home rather than work outside the home and put the child in day care, it would be an excellent thing.

**SEN. GRIMES** had two thoughts: one, was that he watched **Hank Hudson** work on those programs for more than years and how he looked for every avenue he could to strengthen families and get people back on a functional life style. **SEN. GRIMES** said the first two years were incredibly important for that and for **Mr. Hudson** to come forward to support a bill was not a given for him. **SEN. GRIMES** said the program was innovative and it had merit. There might be some details that needed to be worked out but he thought it was worth a try to see how it went.

**SEN. CROMLEY** disagreed with **SEN. STONINGTON** in that it was not for stay-at-home moms. It was for stay-at-home parents.

**SEN. STONINGTON** added there would be another decision point in the issue because it would have to be a budget amendment and that decision would have to be decided initially by the Finance Committee and then by the full body.

**SEN. ESP** said if there happened to be a budget amendment to pass the finance committee, the committee could request a committee bill to do the very same thing if the bill were to be indefinitely postponed today.

**Motion/Vote:** **SEN. BOHLINGER** moved that HB 569 BE CONCURRED IN. Motion carried 6-3 with **SEN. DEPRATU**, **SEN. ESP** voting nay and **SEN. O'NEIL** voting nay by Proxy.

#### EXECUTIVE ACTION ON HB 695

**Motion:** **SEN. GRIMES** moved that HB 695 BE RECONSIDERED.

#### Discussion:

**SEN. GRIMES** had an amendment. **EXHIBIT** (phs68a05)

**SEN. CROMLEY** said he had a problem with it because any time in the constitution, practices before the courts and the rules of evidence were under the Montana Supreme Court, who oversaw the Commission on Civil Rules and Procedures, which was made-up primarily of attorneys in the state, would review the rules. They

met annually and with proposed changes to the Supreme Court, generally they followed the federal rules and the Supreme Court either did or did not act on their recommendation. He said he did not like putting into statute things such as "we will follow rules of evidence or the rules of civil procedure." He thought it messed up the statutes.

**SEN. GRIMES** said he was sensitive to that as well. He had two drafted up, one restated the rules of evidence in code and the other referenced it so it would be established in the code if done the other way.

**SEN. STONINGTON** said she had given it much thought and had **Dave Bohyer** prepare an amendment because she recalled the discussion being that they wanted a sort of comfort zone of having something in statute that defined how expert witnesses were chosen. She said she was resistant to having anything in code that either was tighter than the rules of evidence or lessened the judge's discretion in how this would be handled. She ran some amendments by **SEN. WHEAT** and his response was that it was working well that this was not an issue in the courts. She understood the sentiment of wanting to have something to give it a level of comfort and she sympathized with the doctors frantic feelings about what medical malpractice was doing to them but should be cautioned about putting either the numbers of the rules or the exact wording of the rules in statute.

**SEN. GRIMES** acknowledged it was working well now and that it was a perception issue. It was also an opportunity for **REP. BROWN** to take another look at this over on the other side and see what they wanted to do with it.

**SEN. CROMLEY** said he did think the system worked well. He said his firm primarily did defense work, which was one of the bigger firms that represented the hospital in Billings and many insurance companies and that was his practice in terms of time over the years. He said there were many safe guards in the rules which generally followed the federal rules. The Dobbler Decision was a U. S. Supreme Court case decided a few years ago which clarified some standards and since then there had been many expert witnesses testifying under the Dobbler Decision. They were particular to the medical field. **SEN. CROMLEY** said his firm had a neurologist in Billings involved in some unusual procedures with mammography that involved some type of moving an x-ray out of a company that was promoting it to being an additional diagnostic tool. He said his firm had made motions to exclude witnesses and were sometimes successful. He thought the standards were very good as for not allowing someone practicing a quack science and testifying. It had to be an established science with having been



proven. There was much litigation but the standards that existed were not so black and white that they would not be under this either, and he thought they worked well. He said he was concerned that they were putting in the law something that may not be correct, because he did not know if the legislature could actually say what was in the evidence, however, he did think that was under the auspices of the Montana Supreme Court.

**Motion/Vote: SEN. GRIMES moved that HB 695 BE RECONSIDERED.**

**Motion failed 2-7 with BOHLINGER, CROMLEY, ESP, HARRINGTON, O'NEIL, SCHMIDT, and STONINGTON voting NAY.**

***{Tape: 1; Side: B}***

**ADJOURNMENT**

Adjournment: 4:08 P.M.

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SEN. JERRY O'NEIL, Chairman

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ANDREA GUSTAFSON, Secretary

JO/AG

**EXHIBIT** (phs68aad)